



Announcement
3Q Holdings Limited
ABN 42 089 058 293

Shareholder announcement 18th March 2022

Scheme implementation deed signed with Vela Software to acquire 100% of the shares in 3Q

Summary

- 3Q has entered into a scheme implementation deed with Vela Software, under which Vela Software proposes to acquire 100% of the shares in 3Q for a minimum of approximately \$0.155 per share in 3Q, by way of a scheme of arrangement and share purchase agreement with 3Q's largest shareholder, Elabrook.
- Interdependent with the scheme, Elabrook, has entered into a share sale and purchase agreement with Vela Software, under which Vela Software will acquire 100% of the shares in Elabrook and as a result indirectly acquire all shares held by Elabrook in 3Q.
- The scheme is subject to various conditions including approval by 3Q shareholders (other than Elabrook) at a scheme meeting which is proposed to be held in May 2022.
- 3Q's board of directors unanimously recommends that 3Q shareholders vote in favour of the scheme, in the absence of a superior proposal and subject to an independent expert concluding that the scheme is in the best interests of 3Q shareholders.
- 3Q shareholders do not need to take any action at this time.

Overview of the Scheme

3Q Holdings Limited ACN 089 058 293 (**3Q** or the **Company**) is pleased to announce that it has entered into a scheme implementation deed (**SID**) with Vela Software Group Pty Ltd ACN 117 660 849 (**Vela Software**) and Constellation Software Inc, the ultimate holding company for Vela Software, for the acquisition of all of the issued shares in the Company other than the shares held by Elabrook Pty Limited ACN 098 929 483 (**Elabrook**) (the 3Q shares other than those held by Elabrook being the **Scheme Shares**) under a scheme of arrangement (**Scheme**).

Vela Software's offer values the 3Q Group at a minimum of \$23.4 million.

If the Scheme is implemented, the price payable by Vela Software to 3Q shareholders pursuant to the Scheme is the minimum share price per share of approximately \$0.155, to be paid upon implementation of the Scheme. There is potential for further consideration to be payable to 3Q's shareholders resulting from a calculation of certain of 3Q's net tangible assets as at the date the Scheme becomes effective. If these net tangible assets (being defined as its accounts receivable and cash at bank) exceed its net tangible liabilities (being its bank debt, accounts payable and tax payable) by more than \$400,000, then 3Q shareholders will be paid an additional approximate \$0.017 per share plus a further amount per share equivalent to each share's pro rata proportion of any amount in any excess above that amount.

Accordingly, the maximum consideration that may be payable to 3Q shareholders if the Scheme is implemented (including the consideration payable to Elabrook under the Elabrook Sale) is the aggregate of:

- (a) an initial cash amount of \$23,400,000 payable on implementation of the Scheme, representing approximately \$0.155 per 3Q share;
- (b) a holdback amount of \$2,600,000 representing approximately \$0.017 (subject to reduction resulting from the net tangible asset adjustment above); and
- (c) a further amount equal to the excess (if any) resulting from the net tangible adjustment,

(Scheme Consideration).

Shareholders of 3Q who received their shares pursuant to the 3Q employee share plan will need to pay back any outstanding loan amounts they owe on their shares to 3Q. These funds will then be distributed amongst current employee shareholders of 3Q at the time the Scheme becomes effective who received their shares via the ESOP and who are participating in the Scheme.

Overview of Vela Software

Vela Software is a subsidiary of Constellation Software, a TSX-listed publicly traded company. Constellation Software operates in over 100 countries and dozens of verticals. Constellation Software has completed over 500 acquisitions of small, medium and large private and public companies since its inception in 1995. It provides vertical market software expertise, operational support and capital to help its businesses grow organically and/or through acquisitions.

Elabrook Sale

Vela Software, 3Q directors Shaun Rosen and David Rosen, and the shareholders of Elabrook (being entities associated with Shaun Rosen and David Rosen) (**Elabrook Sellers**) entered into a share sale and purchase agreement for the sale of 100% of the issued share capital in Elabrook to Vela Software (**Elabrook Sale**). The outcome of the Elabrook Sale is that Vela Software will indirectly acquire Elabrook's shares in 3Q, being those shares in the Company other than the Scheme Shares (**Elabrook Shares**).

The purchase price payable under the Elabrook Sale is equivalent to the Scheme Consideration on a per share basis for the Elabrook Shares.

The Elabrook Sale and Scheme are interdependent and must complete together, such that Vela Software will acquire 100% of the shares in 3Q (directly in respect of the Scheme Shares and indirectly in respect of the Elabrook Shares). The Elabrook Sellers will not be eligible to vote at the scheme meeting and a general meeting will also be held consecutively with the scheme meeting to seek shareholder approval of the Elabrook Sale.

Conditions of the Scheme

The Scheme is subject to a number of conditions precedent including the parties procuring warranty and indemnity insurance, both Vela Software and 3Q being satisfied in their discretion as to the status of 3Q's net asset position as the likely date for the Scheme approaches, shareholder approval, court approval and no material adverse change. The completion of the Elabrook Sale is also a condition subsequent. A full excerpt of the conditions precedent and condition subsequent included in the SID is set out in the schedule to this announcement. If you are a 3Q shareholder and would like a full copy of the SID, please email alan@threeq.com.au with your request.

Warranties and indemnities

The Company has provided operational, tax and financial warranties, which are backed by an indemnity as well as a specific tax indemnity. Warranties and indemnities will be covered by warranty and indemnity insurance on the terms of the warranty and indemnity insurance policy on satisfaction of the condition of the Scheme to put this in place, leaving no residual liability for the Company or its shareholders (other than for claims for loss arising out of or relating to fraud, wilful misconduct, wilful concealment or dishonesty by 3Q or any of its current or former directors or officers). Outside of those exclusions, the Bidder's sole recourse is against the warranty and indemnity insurer in respect of any warranty or indemnity claim.

Exclusivity, break fee and termination

During the Exclusivity Period (being the period commencing on the date of the SID and ending on the first of either the termination of the SID, the date on which the scheme becomes effective, or 30 June 2022) the Company has agreed to customary no shop, no talk restrictions.

To the extent that the Scheme does not complete for any of the following reasons, the Company has agreed to pay Vela Software a break fee of \$260,000:

- (a) a change of recommendation of the Scheme by any director of the Company other than in circumstances where the Independent Expert concludes that the Scheme is not in the best interests of shareholders or the Company is entitled to terminate the SID;
- (b) a competing proposal is announced or made during the Exclusivity Period and is completed at any time prior to the first anniversary of the date of the SID and, as a result, a third party acquires a relevant interest and/or economic interest in at least 50% of the Scheme Shares; or
- (c) Vela Software terminates the SID (unless, prior to Vela Software giving the Company notice of termination, the Company has given notice to Vela Software of its termination and the relevant circumstances set out in such notice have not been remedied).

Vela Software has agreed to pay a reverse break fee of \$260,000 if the Company terminates the SID for a material breach of the SID by Vela Software.

If the Scheme completes, then neither the break fee nor the reverse break fee is payable, and if any amount of a break fee has already been paid it must be refunded.

The SID includes customary termination rights for both 3Q and Vela Software. A full excerpt of the termination rights has also been included in the schedule to this announcement.

Board recommendation

The Company will seek shareholder approval of the Scheme at a scheme meeting and approval of the Elabrook Sale at a general meeting, both of which are intended to be held in May this year.

The directors of the Company unanimously recommend that shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert concluding that the Scheme is in the best interests of 3Q shareholders.

Indicative timetable

3Q shareholders do not need to take any action at this stage. A Scheme Booklet containing information relating to the Scheme, an Independent Expert's Report and details of the Scheme Meeting is expected to be sent to shareholders in May 2022.

3Q shareholders will be given the opportunity to vote on the Scheme at the Scheme Meeting, which is expected to be held in late May 2022 and, if approved, the Scheme would be implemented shortly thereafter.

An indicative timetable is set out below (though it remains subject to change).

| Date | Event |
|-------------------------|--|
| Wednesday 13 April 2022 | Lodge Scheme Booklet with ASIC for review |
| Wednesday 27 April 2022 | First Court hearing to obtain orders to convene Scheme Meeting |
| Thursday 28 April 2022 | Scheme Booklet is registered with ASIC |
| Monday 2 May 2022 | Scheme Booklet despatched to Shareholders |
| Thursday 26 May 2022 | Date of Scheme Meeting |
| Monday 30 May 2022 | Second Court Hearing held to approve the Scheme |
| Tuesday 31 May 2022 | Closing Date |
| Tuesday 7 June 2022 | Record Date |
| Friday 10 June 2022 | Implementation Date |

For more information

For further information please contact Alan Treisman, Group CFO at alan@threeq.com.au.

Schedule 1 – Excerpt provisions from SIA

Clause 3.1 - conditions precedent

Conditions precedent

The obligations of Target under clause 5.1m and Bidder's obligation to pay the Scheme Consideration in accordance with the Deed Poll and clause 5.2(j) are subject to the satisfaction (or waiver in accordance with clause 3.2) of each of the following Conditions Precedent:

Conditions Precedent for the benefit of Bidder and Target

- (a) **Court approval:** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (b) **Shareholder approval:** Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act;
- (c) **Elabrook SPA:** the condition precedent to completion set out in clause 2.1(a) of the Elabrook SPA is satisfied or waived;
- (d) **Regulatory approvals:** on or before 8.00am on the Second Court Date, all regulatory approvals required to implement the Scheme are granted or obtained and those regulatory approvals are not withdrawn, cancelled or revoked prior to implementation of the Scheme including, but not limited to ASIC having issued or provided such consents or approvals or having done such other acts which Bidder and Target agree are reasonably necessary to implement the Scheme, notwithstanding that a condition or conditions may have been attached to any such regulatory approval, if that condition (or conditions) is acceptable to Bidder and Target (acting reasonably);
- (e) **No restraints:** no judgement, order, decree, statute, law, ordinance, rule or regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court, the Takeovers Panel, or other Governmental Agency of competent jurisdiction, remains in effect as at 8am on the Second Court Date that prohibits, materially restricts, makes illegal or restraints the completion or implementation of any aspect of the Scheme;
- (f) **W&I Policy:**
 - (i) the W&I Policy has been obtained in the name of Bidder, as the insured party and on the terms reasonably acceptable to Bidder and Target; and
 - (ii) Target has been provided with a copy of the W&I Policy and a copy of the certificate of currency of the W&I Policy; and
 - (iii) Bidder and Target each paid 50% of:
 - (A) the cost of the external advisers of Bidder to conduct additional legal, financial and tax due diligence in respect of the Target Group in respect of the period from 1 August 2021 until the date at which the W&I Policy will be current; and

- (B) the Premium to the W&I Insurer (or its nominee or agent, as the case may be);
- (g) **Escrow Agreement:** Target and Bidder must enter into an agreement with an agreed escrow agent for the purposes of the escrow agent holding the Holdback Amount in escrow from the Implementation Date until the Holdback Release Date, to be disbursed by the escrow agent in accordance with the payments due pursuant to clause 4.2(b) (**Escrow Agreement**);
- (h) **Pre-Closing Statement:** Target provides Bidder with the Pre-Closing Statement by the later of 22 April 2022 and the date that is 5 Business Days after the Scheme Booklet is despatched to Shareholders, and the information in such Pre-Closing Statement is to the satisfaction of each of Bidder and Target (each acting in their sole discretion based on the position in respect of the estimated level of each of Accounts Receivable and deferred revenue, Cash at Bank, Accounts Payable, Tax Payable and Bank Debt as informed by the Pre Closing Statement);

Conditions Precedent for the benefit of Bidder only

- (i) **Prescribed Occurrences:** no Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date;
- (j) **Major Transactions:** except as consented to in writing by Bidder in accordance with clause 3.3(d) no Major Transaction occurs between the date of this deed and 8.00am on the Second Court Date;
- (k) **Material Adverse Change:** no Material Adverse Change occurs or otherwise becomes known to Bidder between the date of this deed and 8am on the Second Court Date;
- (l) **Funding arrangements:** between the date of this deed and 8.00am on the Second Court Date, no member of the Target Group enters into any new funding arrangement by or to which any member of the Target Group or any of its assets may be bound or be subject and, other than for the purposes of complying with clause 6.7(a)(v), no person exercises or purports to exercise or states an intention to exercise, any rights under any provision of any one or more agreement or one or more other instrument, in each case which relates to the funding arrangements of the Target Group and to which any member of the Target Group is a party or by or to which any member of the Target Group or any of its assets may be bound or be subject, which results or could reasonably be expected to result in:
- (i) any monies borrowed by a member of the Target Group being or becoming repayable other than in the ordinary course of business or being capable of being declared repayable immediately or earlier than the repayment or maturity date stated in such agreement or other instrument; or
 - (ii) any such agreement or other instrument being terminated or modified or any action being taken or arising thereunder,
- and such result is material in the context of the Target Group taken as a whole;
- (m) **Bank Debt:** Target provides evidence to Bidder prior to 8.00am on the Second Court Date that the Bank Debt is (and will be as at the Closing Date) a maximum of \$3.3 million and that the Bank Debt lender has consented to the Implementation of the Scheme;
- (n) **Taxes:** upon the Condition Precedent in clause 3.1(h) being confirmed in writing as satisfied or waived in accordance with clause 3.2, Target prepays to the relevant Tax Authorities the

estimate income Tax Payable as set out in the Pre-Closing Statement, settles the Disputed Services Taxes with the relevant Tax Authority and pays the agreed settlement amount in full in relation to the Disputed Services Taxes to the relevant Tax Authority and provides evidence to Bidder that the payments made under this paragraph 3.1(n) have been made.

Clause 3.7 - condition subsequent

Condition subsequent

- (a) The obligations of Target under clause 5.1(m) and Bidder's obligation to pay the Scheme Consideration in accordance with the Deed Poll and clause 5.2(j) (together the **Implementation Provisions**) are subject to the Elabrook Shares having transferred to Bidder pursuant to completion under the Elabrook SPA by no later than 12pm noon on the Implementation Date (**Condition Subsequent**).
- (b) Bidder must use its reasonable endeavours to satisfy, or procure the satisfaction of, the Condition Subsequent.
- (c) If the Condition Subsequent is satisfied, the Scheme will be implemented pursuant to the Implementation Provisions on the Implementation Date. If the Condition Subsequent is not satisfied, the Scheme will lapse and be of no further force or effect and Bidder and Target are each released from any further obligation to take steps to implement the Scheme and any liability with respect to the Scheme.

Clauses 12.1 to 12.3 - termination rights

Termination by either party

Either Target or Bidder (each a terminating party) may terminate this deed at any time before 8am on the Second Court Date in accordance with clause 3.6.

Termination by Bidder

- (a) Subject to the proviso, Bidder (**terminating party**) may terminate this deed by notice in writing to Target at any time before 8am on the Second Court Date if Target is in material breach of any material clause of this deed (other than a Target Warranty) which breach cannot be remedied or has not been remedied by the earlier of:
 - (i) within 5 Business Days of receiving notice from Bidder to remedy that breach; or
 - (ii) midnight at the end of the day before the Second Court Date.
- (b) Bidder (**terminating party**) may terminate this deed by notice in writing to Target at any time before 8am on the Second Court Date if any Target Director or the Target Board publicly changes (including by attaching qualifications to) or withdraws (including by abstaining) their statement that they consider the Scheme to be in the best interests of Shareholders or their recommendation that Shareholders approve the Scheme, or publicly recommends, promotes or otherwise endorses a Competing Proposal, whether or not in accordance with clause 7.1(a) or publicly states an intention to change their voting intention in respect of any relevant Director Shares whether or not in accordance with clause 7.2(b).

Termination by Target

- (a) Subject to the provision, Target (**terminating party**) may terminate this deed at any time before 8am on the Second Court Date by notice in writing to Bidder if:
- (i) the Independent Expert concludes in the Independent Expert's Report (either initially or in any updated report) that the Scheme is not in the best interests of Shareholders; or
 - (ii) Target publicly recommends a Superior Proposal.
- (b) Subject to the proviso, Target (**terminating party**) may terminate this deed at any time before 8am on the Second Court Date by notice in writing to Bidder if:
- (i) Bidder is in material breach of any material clause of this deed which cannot be remedied or has not been remedied by the earlier of:
 - (A) within 5 Business Days of receiving notice from Target to remedy that breach; and
 - (B) midnight at the end of the day before the Second Court Date; or
 - (ii) Bidder or Guarantor breaches a warranty given by it in clause 9.1.

Extract of relevant definitions

Accounts Payable means all of the accounts payable of the Target Group as at the Closing Date, as determined in accordance with Schedule 5.

Accounts Receivable means all of the accounts receivable of the Target Group as at the Closing Date, as determined in accordance with Schedule 5.

Adjustment Tangible Assets means the aggregate dollar value of the Accounts Receivable and Cash at Bank.

Adjustment Finalisation Date has the meaning given to that term in paragraph 5 of Schedule 4.

Aggregate Holdback Amount means \$2,600,000.

Aggregate Shortfall Amount has the meaning given in paragraph 6 of Schedule 4.

Announcement Date means:

- (a) the date on which this deed is executed; or
- (b) if this deed is executed on a day that is not a Business Day, the first Business Day immediately following the day of execution.

ASIC means the Australian Securities and Investments Commission.

Bank Debt means the outstanding balance of the Target Group's facility with Commonwealth Bank of Australia or any other facility provider as at the Closing Date.

Bidder means Vela Software Group Pty Ltd ACN 117 660 849.

Business Day means a business day which is not a public holiday in Sydney, New South Wales or Brisbane, Queensland.

Cash at Bank means cash and cash equivalents in each of the bank accounts held by the Target Group as at the Closing Date.

Closing Date means the date on which the Scheme becomes Effective.

Competing Proposal means any expression of interest, proposal, offer, transaction or arrangement (other than any Transaction that may be made and implemented in accordance with this deed) by or with any person pursuant to which, if the expression of interest, proposal, offer, transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) a person or persons will (other than as custodian, nominee or bare trustee):
 - (i) acquire an interest in, or a Relevant Interest in, or become the holder of, 20% or more of the shares in any Target Group Member (other than pursuant only to the operation of section 611 item 9 of the Corporations Act);
 - (ii) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in, all or a substantial part of the assets or business of any Target Group Member;
 - (iii) otherwise acquire control (within the meaning of section 50AA of the Corporations Act) of any Target Group Member; or
 - (iv) otherwise directly or indirectly acquire, merge or amalgamate with, or acquire a significant shareholding or economic interest in, any Target Group Member or in all or a substantial part of their respective assets or business, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for the Target Group or other synthetic merger or any other transaction or arrangement; or
- (b) Target would be required to abandon or otherwise fail to proceed with the Scheme, by whatever means.

Conditions Precedent means the conditions precedent set out in clause 3.1 of this deed.

Corporations Act means the Corporations Act 2001 (Cth).

Court means the Federal Court of Australia, or other court as agreed by the parties.

Data Room Materials means all documents and information that were at any time up to the midday (Sydney time) on the date of this deed contained in the online data room maintained by Target and made available to Bidder and its Representatives.

Deed Poll means a deed poll to be executed by Bidder and Guarantor in favour of the Scheme Participants substantially in the form of Annexure 3 (or in such other form as Bidder and Target may agree in writing, such agreement not to be unreasonably withheld or delayed).

Disputed Services Taxes means the disputed services Taxes in relation to the Indian Subsidiary disclosed in the Data Room Material and related penalty and interest.

Effective means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme.

Elabrook means Elabrook Pty Limited ACN 098 929 483.

Elabrook Shares means all of the issued capital of Elabrook.

Elabrook SPA means the share sale and purchase agreement for the sale of the Elabrook Shares to Bidder dated on or about the date of this deed.

Encumbrance means any mortgage, lien, charge (fixed or floating), pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim or any other security arrangement or any other arrangement having the same effect and includes any Security Interest.

Escrow Agreement has the meaning given in clause 3.1(g).

Excluded Shares means the Shares held by Elabrook as at the Record Date.

Execution Date means the date of this deed.

Explanatory Statement means each statement pursuant to section 412 of the Corporations Act in relation to the Scheme which will be registered by ASIC, a copy of which will be included in the Scheme Booklet.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, council or entity whether foreign, federal, state, territorial, regional or local (or other statutory authority having jurisdiction or authority to perform or exercise functions or powers in any jurisdiction).

Guarantor means Constellation Software Inc.

Holdback Amount means the amount, in respect of each Scheme Share held by a Scheme Participant on the Record Date, determined in accordance with the following formula:

Aggregate Holdback Amount less, if applicable, the Aggregate Shortfall Amount / the total aggregate number of Scheme Shares and Excluded Shares.

Holdback Release Date means the first Business Day that occurs on the later of:

- (a) ninety one (91) days after the Closing Date; and
- (b) 5 Business Days after the Adjustment Finalisation Date (pursuant to Schedule 4).

Implementation Date means the third Business Day after the Record Date, or such other date as the parties may agree.

Independent Expert means an independent expert to be engaged by Target in accordance with clause 5.1(c) to express an opinion on whether the Scheme is in the best interests of Shareholders in accordance with the Corporations Act and ASIC policy and practice.

Independent Expert's Report means the report from the Independent Expert commissioned by Target for inclusion in the Scheme Booklet, and any update to such report that the Independent Expert issues prior to the Scheme Meeting.

Indian Subsidiary means Island Pacific Retail Systems Private Ltd.

Major Transactions means, except with the prior written consent of Bidder (which cannot be unreasonably withheld if it would have an adverse impact on the Adjustment Tangible Assets), or except to the extent fairly disclosed to Bidder prior to the date of this deed, a member of the Target Group:

- (a) acquires, offers to acquire or agrees to acquire one or more securities or companies (or an interest in one or more securities or companies or assets);
- (b) acquires, offers to acquire or agrees to acquire one or more assets (or an interest in one or more assets), in the aggregate greater than \$250,000;
- (c) disposes (including by grant of an Encumbrance), offers to dispose or agrees to dispose of one or more entities or assets (or an interest in one or more entities or assets) for an amount, or having a market value, in aggregate greater than \$250,000;
- (d) enters into any corporate transaction (including terminating, voluntarily failing to renew or materially detrimentally varying a customer or supplier contract) which would or would be likely to involve a material change in the manner in which the Target Group conducts its business, the nature (including balance sheet classification), extent or value of the Target Group's assets, or the nature (including balance sheet classification), extent or value of the liabilities of the Target Group of an amount having a market value in aggregate greater than \$250,000;
- (e) enters into or offers to enter into any joint venture, asset or profit sharing, partnership, merger of businesses or of corporate entities (including through a dual listed company or stapled structure), involving a commitment of or securities, assets or liabilities;
- (f) incurs, commits to, or brings forward the time for incurring or committing, or grants to another person a right the exercise of which would involve a member of the Target Group incurring or committing to any capital expenditure or liability, or foregoing any revenue, for one or more related items or amounts of in aggregate greater than \$250,000, except for the incurrence of any capital expenditure or liability announced by Target prior to the Announcement Date;
- (g) makes any changes to its constitution or pass any special resolution;
- (h) announces, makes, declares, distributes or resolves to pay or provide any dividend, distribution, bonus or other share of its profits or assets (and whether in cash or in specie);
- (i) discloses the existence of any matter described in sub-paragraphs (a) to (j) above, or announces an intention or proposal to do anything described in sub-paragraphs (a) to (j) above.

Material Adverse Change means any event, matter, change or condition occurs, is announced, or becomes known to Bidder (whether or not becoming public) where that event, change or condition has had or could reasonably be expected to have a 5% decrease effect on the revenue of the Target Group (taken as a whole) or 10% decrease on EBITDA (after capitalising research and development costs), in both cases as compared to FY21 (and for the avoidance of doubt, as an example, if a customer leaves between the Execution Date and the Second Court Date and the revenue from that customer for FY21 is 5% or more of the total revenue of the Target Group for FY21, it would constitute a material adverse change) and includes without limitation, Bidder not being given the opportunity to conduct customer calls in conjunction with the relevant Target representative with each customer agreed in writing by Bidder and Target on or prior to the date of this deed and Pyramid Merchandising Software (Pty) Ltd (a company incorporated in South Africa), not entering into a new distribution agreement with Island Pacific Australia Pty Ltd ACN 099 004 145 negotiated in consultation with Bidder and on the terms agreed in writing by Target and Bidder prior to the date of this deed, other than:

- (a) as expressly contemplated by this deed or the Scheme;
- (b) to the extent that it is fairly disclosed prior to the date of this deed;

- (c) as resulting from an event, matter, change or condition that has a similar or substantially similar impact on other businesses within the industry in which the Target Group operates; or
- (d) with the express consent of Bidder.

Pre-Closing Statement means a statement setting out the information listed in Schedule 7.

Premium means the insurance premium to be paid in respect of the W&I Policy.

Prescribed Occurrence means the occurrence of, or agreement to do, any of the following:

- (a) a member of the Target Group converts all or any of its shares into a larger or smaller number of shares;
- (b) a member of the Target Group resolves to reduce its share capital in any way;
- (c) other than pursuant to the terms of the Target ESOP, a member of the Target Group:
 - (i) enters into a share buy-back agreement; or
 - (ii) resolves to approve the terms of a share buy-back agreement under applicable law or regulation;
- (d) a member of the Target Group issues, or agrees to issue, shares or other securities or instruments, or grants an option over its shares, securities or instruments, or agrees to make such an issue or grant such an option;
- (e) a member of the Target Group issues or agrees to issue any options, awards or other instruments convertible into any shares or other securities in the capital of such member of the Target Group (other than pursuant to an obligation which exists at the date of this deed);
- (f) a member of the Target Group disposes, or agrees to dispose, of the whole, or a substantial part of its business or property;
- (g) a member of the Target Group Encumbers, or agrees to Encumber, the whole, or a substantial part of its business or property;
- (h) a member of the Target Group resolves that it be wound up;
- (i) a liquidator or provisional liquidator of a member of the Target Group is appointed;
- (j) a court makes an order for the winding up of a member of the Target Group;
- (k) an administrator of a member of the Target Group is appointed under sections 436A, 436B or 436C of the Corporations Act;
- (l) a member of the Target Group executes a deed of company arrangement; or
- (m) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of a member of the Target Group.

Record Date means 7.00pm on the fifth business Day following the date on which the Scheme becomes Effective.

Register means the register of Shares kept by Target and Registry has a corresponding meaning.

Related Body Corporate has the meaning it has in the Corporations Act or section 12(2) of the Financial Markets Conduct Act 2013 (NZ), as the context requires.

Relevant Interest has the same meaning as given by sections 608 and 609 of the Corporations Act.

Representatives means in respect of a party, any person acting for or on behalf of that party (including any Related Body Corporate of that party, and any director, officer, employee, agent, affiliate, contractor or professional adviser of that party or its Related Body Corporate).

Scheme means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Target and the Scheme Participants, in the form of Annexure 2, together with any alterations or conditions made or required pursuant to sub-section 411(6) of the Corporations Act and agreed or consented to in writing by Target and Bidder.

Scheme Booklet means the information memorandum prepared by Target in relation to the Scheme to be despatched to all Shareholders, which complies with the requirements of the Corporations Act and the relevant guidelines of ASIC and which incorporates the Independent Expert's Report and the Explanatory Statement prepared for the purposes of section 412(1) of the Corporations Act in relation to the Scheme setting out the full terms of the Scheme.

Scheme Consideration means the consideration to be provided to Scheme Participants under the terms of the Scheme for the transfer to Bidder of their Scheme Shares in accordance with clause 4.2.

Scheme Meeting means the meeting or meetings ordered by the Court in relation to the Scheme to be convened pursuant to Section 411(1) of the Corporations Act.

Scheme Participants means a holder of Scheme Shares on the Record Date.

Scheme Shares means the Shares on issue as at the Record Date, other than the Excluded Shares.

Second Court Date means the first day of hearing of an application made to the Court by Target for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Share means a fully paid ordinary share issued in the capital of the Company.

Shareholders means each person who is registered in the Register as the holder of Shares.

Subsidiary means each of the following entities:

- (a) Island Pacific Australia Pty Ltd ACN 099 004 145;
- (b) ARS Australia Pty Ltd ACN 109 662 026;
- (c) Island Pacific Systems, Inc.;
- (d) AdvanceRetail Technology Limited (New Zealand company number 1910299);
- (e) Island Pacific (UK) Limited;
- (f) Intelligent Retail (UK) Limited; and
- (g) Island Pacific Retail Systems Private Ltd.

Superior Proposal means a bona fide Competing Proposal that the Target Board determines, acting in good faith after having taken advice from its financial and legal advisers):

- (a) is reasonably capable of being substantially completed in accordance with its terms; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Shareholders (as a whole) than the Scheme, taking into account all the terms and conditions of the Competing Proposal and all aspects of the Scheme.

Takeovers Panel means the panel established by Part 10 of the Australian Securities and Investment Commission Act 2001 (Cth) and having functions specified in Part 6.10, Division 2 of the Corporations Act.

Target means 3Q Holdings Limited ACN 089 058 293.

Target Board means the board of directors of Target.

Target Director means a director of Target.

Target ESOP means the employee incentive plan adopted by Target on or around November 2009.

Target Group means Target and its Subsidiaries.

Target Warranty means each warranty of Target set out in clause 9.2.

Tax means any governmental, federal or state tax (including duty, rates, levies, charges or other imposition or withholding) imposed in or outside Australia and includes tax on gross or net income profit or gains, or diverted profits (including income tax required to be deducted or withheld from or accounted for in respect of any payment), corporation tax, capital gains tax, fringe benefits tax, income tax, superannuation guarantee charge, sales tax, goods and services tax, land tax, property tax, pay-as-you-earn, pay- as-you-go or other like withholding tax, customs duty, payroll tax, stamp duty, stamp duty reserve tax, stamp duty land tax, withholding tax, together with any interest, fine or penalty, interest, fee or other amount imposed in respect of the above, and regardless of whether any such tax, duty, rates, levies, charges, imposts or withholdings, interest, fine or penalty interest, fee or other amount imposed in respect of the above assessed, is chargeable directly or primarily to the Target Group or any other person and of whether any amount in respect of any of them is recoverable from any other person.

Tax Authority means any governmental, federal or state tax regulatory authority or any sub-division, agency, commission or authority of such authorities responsible for the collection of any Tax or administration of any Tax Law in any applicable jurisdiction.

Tax Law means any law (including principles of law or equity established by decisions of courts) that applies to any Tax including any rule, regulation, ordinance, order, by-law, local law, statutory instrument, control, restriction, direction or notice made under any law in any applicable jurisdiction by any Government Agency or Tax Authority.

Tax Payable means the amount of any Taxes that are payable as at the Closing Date that relate to the period up to the Closing Date (including any Tax which remains unpaid in respect of the period prior to the financial year commenced on 1 July 2021), but excluding the Disputed Services Taxes.

Transaction means the proposed transactions pursuant to which Bidder will acquire the Scheme Shares under the Scheme, in consideration for the provision of the Scheme Consideration and any action to be undertaken pursuant to, or in connection with, a Transaction Document.

W&I Insurer means the insurer of the W&I Policy.

W&I Policy means a policy of insurance in the agreed terms issued in the name of and in favour of Bidder which, in accordance with its terms, provides warranty and indemnity insurance coverage in respect of the warranties and indemnities provided by Target under this deed:

- (a) with coverage to a maximum amount equal to the W&I Policy Limit;
- (b) effective for the period commencing on the date of this deed and ending not earlier than 30 days after the expiration of the last date on which any W&I Claim may be made under this deed; and
- (c) otherwise on terms consistent with similar insurance policies available in the market place, taking into account the particular nature of the Scheme Shares to be acquired under this deed.



W&I Policy Limit means \$20 million.